



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

Docket No. 132-21
Ref: Signature Date

Dear

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 28 October 2021. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies. In addition, the Board considered the advisory opinion contained in Director CORB letter 5220 CORB: 002 of 1 September 2021; a copy of which was previously provided to you for comment.

A review of your record shows that you entered active duty with the Marine Corps in June 2012. You suffered a left arm injury in May 2014 due to a grease oil accident while cooking. This resulted in a medical board on 17 October 2014 that diagnosed you with Pain in Limb and a referral to the Physical Evaluation Board (PEB). A non-medical assessment was completed on 16 December 2014 that documented your inability to perform your MOS related duties as a result of your left arm injury. On 3 February 2015, the PEB found you unfit for Pain in Limb, Left Upper Extremity. The Department of Veterans Affairs (VA) proposed disability ratings for all your service connected disabilities including 20% for your unfitting condition. As a result, the PEB adopted the proposed 20% rating and recommended your discharge from the Marine Corps with severance pay on 19 February 2015. You were discharged from the Marine Corps on 30 December 2015 pursuant to your PEB findings. In 2016, the VA assigned you the ratings proposed in 2015 effective the day after your discharge from the Marine Corps. In December 2020, the VA increased your disability rating for your migraine headaches and rated you for Post-Traumatic Stress Disorder.

The Board carefully considered your arguments that you deserve to be placed on the disability retirement list with a combined 40% rating. You argue that you the PEB failed to consider a hypertension diagnosis that received a VA rating of 20% in their adjudication of your case. Unfortunately, the Board disagreed with your rationale for relief. In making their findings, the Board substantially concurred with the advisory opinion in your case. Specifically, the Board agreed with the opinion that the preponderance of the evidence provides insufficient support for relief based on the absence of evidence that your hypertension or heart condition caused an impairment to your ability to perform the duties of your office, grade, rank, or rating. In addition, the Board found no evidence to suggest that either of those conditions created a danger to you or others. Finally, the Board also determined there was insufficient evidence that a combination of those conditions with your unfitting condition would cause an overall effect of unfitness. The Board relied on the lack of medical evidence that would suggest an occupational impairment was caused by those conditions and the non-medical assessment by your command that only discussed the impairment caused by your arm injury. Based on these factors, the Board concluded that the preponderance of the evidence does not support a finding that you were unfit for hypertension or coronary heart disease. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

11/2/2021

Deputy Director